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IN THE
COURT OF APPEALS OF INDIANA

MARVIN JACKSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-0805-CR-428
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Donald C. Johnson, Judge
Cause No. 79D01-0801-FA-3

October 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Marvin Jackson pleaded guilty to possession of cocaine[1] as a Class D felony, possession of marijuana[2] as a Class A misdemeanor, and resisting law enforcement[3] as a Class A misdemeanor. He was sentenced to three years for the cocaine possession, one year for the marijuana possession, and one year for resisting law enforcement with the sentences to be served consecutively. One year of the sentence was suspended, leaving an executed sentence of four years. He appeals, raising the following two issues:

I. Whether the trial court properly imposed consecutive sentences; and

II. Whether Jackson's sentence was inappropriate.

We affirm.

FACTS AND PROCEDURAL HISTORY

Jackson was pulled over by a police officer on patrol after making an illegal turn. *Appellant's App.* at 13. The officer detected the odor of burning marijuana and noticed loose marijuana on Jackson's clothing. *Id.* After Jackson admitted to having just smoked marijuana, the officer took him into custody and searched his vehicle, finding a marijuana cigarette. *Id.* During processing at the county jail, corrections officers noticed that Jackson, who "kept reaching back between his buttocks," appeared to be attempting to conceal something. *Id.* Jackson refused the officers' demands to submit to a body search by "pushing and flailing his arms and pulling his legs up under his body," and the officers had to

[1] *See* IC 35-48-4-6(a).

[2] *See* IC 35-48-4-11(1).

[3] *See* IC 35-44-3-3(a)(1).

physically restrain him with handcuffs and shackles. *Id.* Jackson then told the officers that he was concealing crack cocaine between his buttocks, and an officer removed a bag containing approximately 2.75 grams of cocaine from Jackson's person. *Id.*

The State charged Jackson with dealing in cocaine as a Class A felony, possession of cocaine as a Class B felony, possession of marijuana as a Class A misdemeanor, resisting law enforcement as a Class A misdemeanor, and operating a vehicle while never having received a license as a Class C misdemeanor. Pursuant to a plea agreement, Jackson pleaded guilty to possession of cocaine as a Class D felony, possession of marijuana as a Class A misdemeanor, and resisting law enforcement as a Class A misdemeanor. The court sentenced him as set forth above. Jackson now appeals.

DISCUSSION AND DECISION

I. Consecutive Sentencing

"[S]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (citing *Smallwood v. State*, 773 N.E. 2d 259, 263 (Ind. 2002)). "An abuse of discretion occurs if the decision is 'clearly against the logic and effect of the facts and circumstances.'" *Id.* (citing *K.S. v. State*, 849 N.E. 2d 538, 544 (Ind. 2006) (quoting *In re L.J.M*, 473 N.E.2d 637, 640 (Ind. Ct. App. 1985))). In some cases, the trial court's discretion when imposing consecutive sentences is restricted by statute. IC 35-50-1-2(c) provides, in relevant part:

> The court may order terms of imprisonment to be served consecutively . . . [h]owever, . . . the total consecutive terms of imprisonment . . . to which the defendant is sentenced for felony convictions arising out of an episode of

> criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of a felony higher than the most serious of the felonies for which the person has been convicted.[4]

Jackson contends that his offenses arose out of a single episode of criminal conduct, and therefore, the maximum consecutive sentence allowed by statute for a Class D felony and two Class A misdemeanors is four years, the advisory sentence for a Class C felony. IC 35-50-2-6(a). We do not agree.

IC 35-50-1-2(b) defines an episode of criminal conduct as "offenses or a connected series of offenses that are closely related in time, place, and circumstance." Jackson's possession of marijuana charge arose from the traffic stop, whereas the resisting arrest charge occurred later during processing at the county jail when Jackson resisted officers' attempts to search him. Because the two acts were not part of the same episode of criminal conduct, the statutory cap does not apply.

II. Inappropriate Sentence

Jackson argues that his consecutive sentence totaling five years was inappropriate in light of mitigating factors such as his young age and his willingness to take responsibility for his actions. Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed

[4] The State incorrectly argues that the statute does not apply to misdemeanor charges. *Appellee's Br.* at 4-6. This court has previously held that it does. *Deshazier v. State*, 877 N.E. 2d 200, 211 (Ind. Ct. App. 2007) *trans. denied* (citing *Purdy v. State*, 727 N.E. 2d 1091, 1094 (Ind. Ct. App. 2000) *trans. denied*).

the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005).

Jackson has a history of criminal behavior that includes convictions for criminal trespass to a vehicle and abuse or neglect of a dependant child, as well as several charges for possession of marijuana, trespass to land, and property damage which were stricken from the record with leave to reinstate. *Tr*. at 18. Jackson also admitted to having used marijuana ten to fifteen times a month for the past seven years, and cocaine over a hundred times over the past three years. *Id.* at 21. In light of Jackson's extensive criminal history and his admitted history of substance abuse, we do not believe that his five-year aggregate sentence, with one year suspended, was inappropriate.

Affirmed.

VAIDIK, J., and CRONE, J., concur.